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in his official capacity as Attorney General
and Intervenor-Defendant State of Arizona*

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mikkel Jordahl; Mikkel (Mik) Jordahl,
P.C.,
Plaintiffs,
vs.
Mark Brnovich, Arizona Attorney
General; Jim Driscoll, Coconino County
Sheriff; Matt Ryan, Coconino County
Board of Supervisors Chair; Lena
Fowler, Coconino County Board of
Supervisors Vice Chair; Elizabeth
Archuleta Coconino County Board of
Supervisors Member; Art Babbott,
Coconino County Board of Supervisors
Member; Jim Parks, Coconino County
Board of Supervisors Member; Sarah
Benatar, Coconino County Treasurer, all
in their official capacities,

Defendants,
and
State of Arizona,
Intervenor-Defendant

Case No: 3:17-cv-08263-PCT-DJH

**STATE'S NOTICE OF
SUPPLEMENTAL AUTHORITY**

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants Mark Brnovich and the State of Arizona (the “State”) respectfully submit this notice of supplemental authority regarding two developments that have occurred since oral argument was held on May 23, 2018: (1) release of an updated Arizona Agency Handbook that provides guidance regarding A.R.S. § 35-393 *et seq.* (the “Act”) and (2) voluntary dismissal pursuant to settlement of *Koontz v. Watson*, No. 17-4099-DDC-KGS, 2018 WL 617894 (D. Kan. Jan. 30, 2018), a case on which Plaintiffs have placed extensive reliance.

Agency Handbook. Under Arizona law, the Attorney General is required to “[c]ompile, publish and distribute to all state agencies, departments, boards, commissions and councils” an “Arizona agency handbook” “at least every ten years.” A.R.S. § 41-192(A)(8). The Agency Handbook “sets forth and explains the major state laws that govern state agencies, including information on the laws relating [*inter alia*] to ... contracting with the government ... [and] discrimination[.]” *Id.* The Attorney General recently released the 2018 Edition of the Agency Handbook, which updates and replaces the prior 2014 Edition. The 2018 Edition includes many changes from the 2014 Edition. Pertinent here, the 2018 Edition adds a section (5.4.18) specifically addressing implementation and interpretation of the Act, which is attached as Exhibit A. The Agency Handbook provides interpretive guidance that closely tracks the interpretation of the Act offered by the State previously in this litigation. *See Doc. 28 at 8-14, Doc. 46 at 2-3.* In particular, it offers guidance concerning what “company,” “affiliate,” and “boycott of Israel” mean for purposes of determining whether the Act applies. *See Ex. A.*

The Agency Handbook’s guidance presents the formal legal opinion of the Attorney General, upon which agencies and political subdivisions may fairly rely absent adverse court precedent. *Cf. Marsto’s Inc. v. Roman Catholic Church of Phoenix*, 132 Ariz. 90, 94 (1982) (“We believe that [plaintiff] had the right to rely on the opinion of the Attorney General until the court spoke.”); *City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 483 n.2 (1990) (treating Agency Handbook as legally equivalent to a formal

1 Attorney General opinion). In addition, “the reasoned opinion of a state attorney general
2 should be accorded respectful consideration.” *Ruiz v. Hull*, 191 Ariz. 441, 449 ¶ 28
3 (1998).

4 **Koontz Dismissal.** Plaintiffs have placed enormous reliance on the District of
5 Kansas’s issuance of a preliminary injunction in *Koontz*, citing it more than twenty times
6 in their Reply brief. *See Doc. 39 at 1, 4, 5, 7, 9, 16, 17, 20, 21, 22 n.8, 23 n.9, 27. Koontz*
7 has now been “dismissed with prejudice” and the “the Preliminary Injunction entered
8 against defendant … dissolved” pursuant to a settlement. *See Koontz Doc. 33 at 1* (June
9 29, 2018) (attached hereto as Exhibit B).¹

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12 Respectfully submitted this 12th day of September, 2018.

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MARK BRNOVICH
ATTORNEY GENERAL

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1 Moreover, Kansas’s law was amended to, *inter alia*, apply only to companies, rather
2 than individuals (thus following the approach of Arizona’s present law, which similarly is
3 limited to companies). *See Smith, Sherman, Judge dismisses lawsuit over Israel boycott*
4 *ban, orders state of Kansas to pay legal fees*, 2018 WLNR 20009321 (June 30, 2018)
5 (attached hereto as Exhibit C).

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2018, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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